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## **Committee E50 on ENVIRONMENTAL ASSESSMENT, RISK MANAGEMENT AND CORRECTIVE ACTION**

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June 17, 2008

Ms. Susan Bodine  
Assistant Administrator  
Office of Solid Waste and Emergency Response  
U.S. Environmental Protection Agency (Mail Code 5101T)  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

**Subject:** Request to add reference to ASTM E2247-08, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property to All Appropriate Inquiries Regulation, 40 C.F.R. § 312.11

Dear Ms. Bodine:

### **ASTM and Committee E50 Background**

ASTM International is one of the world's largest voluntary standards development organizations. More than 11,000 ASTM standards, which address health, safety and the environment, are published annually. The standards, and related technical information, are widely used throughout the world as the basis of purchasing and other contracts, codes and regulations.

ASTM Committee E50 on Environmental Assessment, Risk Management and Corrective Action was formed in 1990 to provide a forum in which, among other things, committee members may discuss issues and develop standard industry practices for environmental site assessments performed in connection with commercial real estate transactions. Committee E50 is a well-balanced committee with over 1,000 members representing all of the stakeholder groups such as environmental engineers, consultants and geologists, insurers, lenders, attorneys, real estate professionals, environmental activists, and representatives from state and Federal government.

## **ASTM's Request**

ASTM International respectfully requests that the EPA add a reference in section 312.11 of EPA's All Appropriate Inquiries (AAI) regulation to ASTM Standard Guide E2247-08 as being consistent with the AAI Final Regulation and compliant with the statutory criteria for all appropriate inquiries. E2247 was initially adopted in 2002 and was recently revised by ASTM Committee E50 on Environmental Assessment, Risk Management and Corrective Action for the purpose of ensuring its consistency with the AAI final rule and compliant with the AAI statutory criteria. During this revision process, Committee E50 sought and received input and advice from EPA's Office of Brownfields and Land Revitalization and the Office of General Counsel. ASTM International and Committee E50 believe that referencing E2247-08 in the AAI Regulation will provide the needed guidance to parties purchasing large tracts of land and seeking CERCLA liability protection as bona fide prospective purchasers or innocent landowners. Details supporting ASTM's request for referencing E2247 follow below.

### **E2247 Is Consistent with the AAI Final Rule and the AAI Statutory Standards**

The regulations for conducting all appropriate inquiries outline the standards and practices for conducting the activities included in each of the statutory criteria established by Congress in the 2002 Brownfields Amendments to CERCLA. E2247-08 is consistent with all of the outlined standards and practices and referencing E2247-08 is consistent with the agency's intent to allow for the use of applicable and compliant voluntary consensus standards when possible to facilitate implementation of the final regulations and avoid disruption to parties using voluntary consensus standards that are found to be fully compliant with the federal regulations.

### **E2247 Represents Industry Consensus**

The consensus process for developing ASTM standards is quite rigorous: a task group formulates a draft standard, which it believes reflects standard industry practices. The draft is submitted to the appropriate subcommittee (in this case, Subcommittee E50.02 on Real Estate Assessment and Management) for consideration, discussion and voting. Subcommittee approval requires an affirmative vote of at least two thirds of the combined affirmative and negative votes cast by voting members with not less than 60% of the voting members returning ballots. The main committee (E50) approval requires an affirmative vote of at least 90% of the combined affirmative and negative votes cast by voting members with not less than 60% of the voting members returning ballots. All standards being balloted at the main committee level are simultaneously included in the ASTM Society Review (there are no numerical requirements at the Society level). In addition to the numerical requirements above, all negatives and comments received during the process must be handled successfully. The Committee on Standards (COS), a standing committee that reports directly to the ASTM Board of Directors, must review the handling of negative votes that have been determined "not persuasive" by the subcommittee and main committee (to ensure that the procedures have been followed) prior to approval of the standard by ASTM. ASTM also has a proven process for maintaining standards over time. Standards are revised as needed by the appropriate technical subcommittee but at a minimum reviewed for revision, reapproval or withdrawal every four years.

In summary, E50 is a well-balanced Committee, develops standards according to a defined set of consensus principles and takes prompt action to update their standards to reflect current industry and government practices.

## **Meets the Marketplace Need**

E2247 was originally developed to meet the unique environmental assessment needs of parties involved in the acquisition of large acreage forestland and rural property. Forest industry, other natural resource industries, conservation organizations, forest and rural real estate professionals, lenders, resource management agencies, and environmental consultants are examples of the wide variety of parties that apply the E2247 standard practice. However, the final AAI rules do not reference E2247 and hence CERCLA landowner liability protections are not available to users of the E2247 standard. Given the marketplace acceptance of the E2247 standard, there would be significant public benefit and minimal market disruption from EPA determining that the revised E2247-08 standard complies with the AAI requirements and therefore referencing the standard in section 312.11 of the AAI rules.

## **Public Law 104-113, the National Technology Transfer and Advancement Act**

Public Law 104-113, the National Technology Transfer and Advancement Act directs federal agencies and departments to use technical standards that are developed by voluntary consensus standards bodies to carry out policy objectives and further directs Federal agencies and departments to participate with consensus standards bodies in the development of technical standards when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities and budget resources. ASTM believes that referencing E2247 in AAI is clearly in the public interest and is compatible with agency and departmental missions, authorities, priorities and budget resources.

ASTM and EPA have worked cooperatively and successfully for many years as the Code of Federal Regulations (CFR), Title 40 currently references nearly 1000 ASTM standards. Most recently, ASTM and the EPA worked cooperatively to have E1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Assessments referenced in the AAI rule (§ 312.11; see 70 Fed. Reg. 66070, 66081 (Nov. 1, 2005)). The same cooperative working relationship between ASTM and EPA produced the current revisions to E2247.

If you have any questions about Committee E50, the ASTM, or the E2247-08 Standard and its conformity with EPA's AAI regulations, please contact Mr. Dan Smith at 610-832-9727 or [dsmith@astm.org](mailto:dsmith@astm.org).

Sincerely,



Julie Kilgore  
E50 Committee Chairman

Attachment: ASTM E2247-08 Standard

cc: James Thomas, ASTM President  
Norman Eke, E50.02 Subcommittee Chairman  
David Parsonage, E2247 Task Group Chairman  
Dan Smith, E50 Staff Manager  
David R. Lloyd, U.S. EPA  
Patricia Overmeyer, U.S. EPA

